IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

WP(C).No. 25197 of 2006(Y)

PETITIONER:

K.C.THOMAS, S/O.DEVASSY, AGED 59,
KANNADAN HOUSE, MALAYINKEEZHE, KOTHAMANGALAM,
SECRETARY, KOTHAMANGALAM SCB (RETIRED)

BY ADV. SRI.P.P.JACOB
SRI.B.MANIMOHAN

RESPONDENTS:

1. KOTHAMANGALAM SCB LTD.NO. 583,
KOTHAMANGALAM, REP. BY ITS SECRETARY.

2. THE KERALA STATE CO-OPERATIVE EMPLOYEES,
PENSION BOARD, TRIVANDRUM.

BY ADV. SRI.V.G.ARUN -- R2
SRI.B.MANIMOHAN
GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 25197/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE PENSION FORMAT FORWARDED BY R1 TO THE R2.

EXT.P2. COPY OF THE LETTER BY R1 TO THE PETITIONER DT. 5/4/06.

EXT.P3. COPY OF THE JUDGEMENT IN WPC NO. 5212/06 DT. 14/7/06.

EXT.P4. COPY OF THE PENSION SANCTION ORDER BY R2.

EXT.P5. COPY OF THE STATEMENT PREPARED BY PETITIONER SHOWING THE DETAILS SALARY AND PENSION.

EXT.P6. COPY OF THE PENSION PAYMENT ORDER NO. 363/EKM DT. NIL OF THE R2.

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K.M.JOSEPH, J.

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WP.(C) No.25197 of 2006

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Dated this the 4th day of July, 2007

JUDGMENT

Petitioner retired from the service of the first respondent Society. According to him he has 30 years of qualified service. There was delay in sanctioning pension. Petitioner approached this court earlier and by Ext.P3 judgment this court directed to consider the claim of the petitioner as admitted by the first respondent. According to the petitioner he is entitled to get Rs.12,907/- as monthly pension. But by Ext.P4 order petitioner is sanctioned only Rs.10,000/-. Petitioner challenges Ext.P4. According to him the correct method for arriving at the pension is shown in Ext.P5. As per Ext.P5 statement he would point out that the average pay will be Rs.25,814/- and 50% of the same is the pension amount, i.e. Rs.12,907/-. In Ext.P4 after referring to G.O.(P) No.44/95 dated 14.3.1995 (SRO. 323/95) and G.O.(P) No.53/2001 dated 7.3.2001 (SRO.271/2001) petitioner is sanctioned only Rs.10,000/-. He has also given the arrears on the said calculation.

2. In the counter affidavit filed by the second respondent it is

stated as follows:

> "The pension sanctioned to the petitioner is correct and calculated as per the formula provided under Clause 22 of the Scheme and Clause 2(d) of G.O.(P) 129/06/Co-op whereby the qualifying service for considering pension is limited to 30n years and the average pay of the pensioner for the maximum service of 30 years to Rs.20,000/- respectively. The explanation to the above G.O also clarifies that ceiling has been fixed for the average pay and service period, for the effective and smooth functioning of the pension scheme."

Therefore it is stated that petitioner is given the benefit.

2. I heard counsel for the petitioner Sri.P.P. Jacob and Sri.V.G.Arun, appearing for the respondents. Counsel appearing for the parties referred to Clauses 20 and 22. Sub clause (1) of Clause 22 is substituted by SRO. 271/2001. The manner of calculating the amount of pension is mentioned as

$$\text{Pension} = \frac{\text{Average Pay} \times \text{Qualifying Service}}{60}$$

Qualifying service is subject to a maximum of 30 years. A proviso was

inserted by SRO. 597/2006 published in the Kerala Government Gazette Extraordinary No.1293 dated 7.8.2006, which reads as follows:

> "Provided further that for calculating pension, the average pay shall be limited to Rs.20,000/- (Rupees twenty thousand only) in case the length of service is less than 30 years and the pension shall be calculated as follows:
>
> $$\text{Pension} = \frac{\text{Average Pay x Qualifying Service}}{\text{720 number of months}}$$"

According to the petitioner under the said proviso the average pay can be limited to Rs.20,000/- only in a case where service is less than 30 years and the pension is to be calculated in the manner provided therein. In this case he would contend that length of the service of the petitioner is 32 years. Therefore the average pay cannot be limited to Rs.20,000/-. The average pay means the average of pay drawn by an employee of a society during the last ten months of his qualifying service. This aspect is not seen considered while passing Ext.P4 order.

Accordingly Ext.P4 order is liable to be quashed. I quash it. The second respondent will consider the matter afresh and will take a decision in the matter within six weeks from the date of receipt of a

copy of this judgment and any benefit found due on the same shall be disbursed within one month thereafter.

(K.M. JOSEPH, JUDGE)

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